

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 85-489-RGS

UNITED STATES OF AMERICA

v.

METROPOLITAN DISTRICT COMMISSION, et al.

CIVIL ACTION NO. 83-1614-RGS

CONSERVATION LAW FOUNDATION  
OF NEW ENGLAND, INC.

v.

METROPOLITAN DISTRICT COMMISSION

SCHEDULE SEVEN COMPLIANCE ORDER NUMBER 242

January 3, 2018

STEARNS, D.J.

On December 14, 2017, the Massachusetts Water Resources Authority (MWRA) filed its Biannual Compliance and Progress Report (the 242nd such report over the course of this litigation). The United States and the Conservation Law Foundation have since notified the court that they do not intend to file responses.

Schedule Seven

There were no scheduled activities during the past six months on Schedule Seven.

Combined Sewer Overflow (CSO) Program

a. CSO Post-Construction Monitoring

On October 18, 2017, the MWRA Board of Directors awarded a professional services contract to AECOM Technical Services, Inc. (AECOM), for implementation and oversight of the three-year, post-construction monitoring program and performance assessment of the Long-Term Combined Sewer Overflow (CSO) Control Plan. The award was made well before the January 2018 milestone set out in Schedule Seven. The MWRA anticipates the delivery of the completed performance assessment to the United States Environmental Protection Agency (EPA) and the Massachusetts Department of Environmental Protection (DEP) in December of 2020 (in compliance with the final milestone set out in Schedule Seven).

The MWRA and AECOM are coordinating with the CSO constituent communities – the Boston Water and Sewer Commission, and the cities of Cambridge, Chelsea, and Somerville – to allow ADS Environmental Services and SDE Engineering, the system inspection sub-consultants, to begin a preliminary inspection of some 200 active or closed CSO regulator structures. The contract calls for the installation of temporary flow and

overflow meters by April 1, 2018. Data will be collected from these meters and others maintained by the CSO constituent communities through June 30, 2020. To facilitate the project, the MWRA and AECOM have met with the CSO constituent communities to establish protocols for sharing monitoring data. AECOM will use this data, as well as hydraulic modeling results, to prepare semi-annual performance evaluations during the three-year assessment period. The semiannual reports will be submitted to EPA and DEP and posted on the MWRA's public website. AECOM is expected to complete a project Work Plan and Schedule, as well as a Quality Assurance/Quality Control Plan governing future monitoring, in early 2018.

As previously reported, the MWRA submitted a scope of work to EPA and DEP on May 1, 2017, describing the proposed post-construction CSO monitoring program and performance assessment. DEP has since noticed the MWRA's scope of work in the *Massachusetts Environmental Monitor* for public comment. Based on the comments received, the MWRA has submitted a revised scope of work for monitoring CSO variances in the Charles River, Alewife Brook, and Upper Mystic River to EPA.

b. City of Cambridge CSO Restoration Work

As previously reported, the City of Cambridge completed all court-mandated CSO control work regarding the CAM004 sewer separation project in December of 2015 (in compliance with Schedule Seven). At that time, the MWRA noted that Cambridge was continuing to perform road, sidewalk, and other surface restoration work in the CAM004 project area, including the restoration of 7.8 miles of roadway, and 15 miles of sidewalk, and the reinstallation of 150 pedestrian ramps. Cambridge has now completed all restoration work in the CAM004 area.

c. George Henderson Retirement

The court would like to take this opportunity to acknowledge the 29 years of service dedicated to this litigation by Assistant U.S. Attorney George “Bunker” Henderson. (AUSA Henderson announced his retirement in a December 18, 2017 letter to the court.) Mr. Henderson represented the United States during this court’s introduction to critical issues of water safety and supply in the greater Boston area as the lead counsel for the Environmental Protection Agency in the trial of *United States v. Massachusetts Water Resources Authority*, 97 F. Supp. 2d 155 (2000). Although the court ultimately disagreed with the government’s litigating position, this by no means detracts from the court’s assessment that the trial itself, thanks to the efforts of Mr. Henderson and the other attorneys

involved, was one of the most capably presented explorations of public policy to ever unfold in a Massachusetts courtroom. Mr. Henderson remained involved in the larger scope of the litigation after Judge Mazzone's untimely death, when I assumed additional responsibility for federal court oversight of the Boston Harbor remediation project. I would like to express my personal appreciation for Mr. Henderson's constructive role as a faithful officer of the court and honorable advocate of the interests of the United States. His participation will be missed.

ORDER

Consistent with the court's revised Scheduling Order, the MWRA will submit Compliance Report No. 243 on or before June 15, 2018.

SO ORDERED.

/s/ Richard G. Stearns

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UNITED STATES DISTRICT JUDGE